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The first half year after the adoption of the Kyoto Protocol (KP) at the third Conference of the Parties (COP 3) in November 1997 was marked by a certain awe and the characterisation of this landmark treaty as a "koan" in the Zen tradition - because its meaning was a mystery and allowed for a wide range of interpretations. Since then, the international process has become entrenched in battles of retreat, most notably as regards the concrete design of the various flexibility instruments, the so-called "Kyoto Mechanisms". At the same time, domestic implementation of the Protocol has remained at best superficial, with a few exceptions. This is true even for rather "progressive" governments - the new red-green coalition in Germany has so far not been successful in the formulation of a coherent climate change policy.

Perhaps one of the most frustrating aspects of the Kyoto Protocol is the provision for its entry into force: under the requirement that industrialised countries must represent at least 55 percent of Annex I-emissions in 1990, the US enjoys a factual veto since it represented roughly 36 percent of those emissions. This threshold does not only diminish the chances for an early start, but it furthermore confers upon the US a considerable bargaining power. Therefore the elaboration of the many open features of the Protocol, whose design already largely follows US proposals, will once more be dominated by this one country. A leadership group of countries, comprising the EU, Japan and others, does not appear to be in sight. Political initiatives of the kind would be highly desirable, however.

The Buenos Aires Plan of Action, adopted at the fourth Conference of the Parties in November 1998, will dominate the international (and national) climate negotiations and policies over the next years to come. Most of the efforts will be directed towards the elaboration of the rules for the Kyoto Mechanisms (Emissions Trading, Joint Implementation and the Clean Development Mechanism) to be adopted by COP 6 in the year 2000 according to the Plan of Action. A mechanism to address cases of non-compliance is another important aspect to be negotiated. However, the wording of the Plan of Action is not binding and has therefore been cautiously described as a "political timetable" by Michael Zammit Cutahar, the Executive Secretary of the Climate Secretariat.

1. Small Steps: The Results of Buenos Aires

The negotiations regarding the timetable for the outstanding decisions on the „Kyoto Mechanisms“ were undoubtedly at the centre of attention in Buenos Aires. This term describes the „flexible“ (economic) instruments of Emissions Trading and the "Joint Implementation" of commitments (Joint Implementation and the Clean Development Mechanism, see below). The Kyoto Protocol establishes quantified emission reduction and limitation commitments for industrialised countries to reduce their greenhouse gases. These obligations range - to mention only the most important countries - from minus eight percent for the EU, minus seven percent for the USA and minus six percent for Japan and Canada to a "freezing" at 1990 levels for Russia and the Ukraine. The fulfilment of these commitments shall be supported partly by buying and selling of emission rights and by crediting emission reductions realised abroad. The American chief negotiator, Stuart Eizenstat, clearly signalled that without agreement on these instruments, ratification of the Protocol by the USA would be out of the question.

Emissions trading is the more important instrument in practice. It is also more interesting in terms of theoretical economics. Should a Party to the Protocol remain below its allocated amount of greenhouse gas emissions, it will be allowed to transfer the surplus to other countries. This could take place on an open market similar to a stock exchange, which could lead to the establishment of a real market price. The transfer might, however, also take the form of a kind of barter between governments. The Kyoto Protocol only contains the basic principles of such trading and detailed rules must be established before the beginning of the first commitments in the year 2008. This may appear to be a lot of time, but almost all industrialised countries tend to link the development of emissions trading to another instrument of great importance to developing countries – the Clean Development Mechanism.

The timetable for this "mechanism" is more tight, since the Kyoto Protocol states that as early as 2000 industrialised countries may credit project based emission reductions realised in developing countries to their own emissions budget. By then, binding regulations must be set up in order to prevent each country from following selfmade rules on the calculation of emission reductions. This time pressure is being used by industrialised countries to pressure developing countries – who exhibit great interest in this instrument – into agreeing on the rules of emissions trading and "Joint Implementation" between developed countries. As outlined in the Buenos Aires Plan of Action, all detailed rules shall be adopted in one packet at the Sixth Conference of the Parties in late 2000.

Surely, there is a danger that by bundling up all these rules, the ecological effectiveness of the instruments will fall by the wayside. The extent of the regulations to be established is immense, as can also be seen from the long catalogue of open questions attached to the agreement. Many open questions remain. They range from the institutional organisation, the problems of monitoring and verification, the mechanism for the determination of a breach and the enforcement of the rules, to the method of measurement in order to calculate the reductions achieved through project based instruments.

On top of the many technical issues concerning the concrete terms of the instruments, there is the politically highly controversial question whether upper limits should be set on fulfilling obligations via flexible instruments. Such a limit would of course interfere with the efficiency of the instruments, but appears to be justified by the fact that Russia and the Ukraine offer a large selling potential. This is due to the economic decline in these countries, which caused emission reductions of carbon dioxide by more than 30 percent. This so-called "hot air" from the East would be enough to, for example, cover the USA's reduction commitment. Thus, buying these emission rights could almost completely save the „energie junkie“ USA from the necessary withdrawal.

To emphasise the significance of this issue to the US its chief negotiator, Stuart Eizenstat, went so far as to quote Winston Churchill in his famous dictum from World War II: he vowed that the USA would "fight on the beaches and in the trenches" against such a limit. As it seems very unlikely that the Kyoto Protocol could enter into force without the USA, these words carry a significant amount of weight. Hence, the EU will meet with tough resistance when trying to set an upper limit for using flexible instruments – especially since this objective has become controversial internally in the meantime. In early 1999, only Germany, Austria and Denmark were actively supporting such a „cap“. It would therefore appear sensible to develop another form of limitation to use as a fall back position. This could be the introduction of a tax on emissions trading and joint implementation, the proceeds of which could be used for climate protection in developing countries.

Not only Stuart Eizenstat, but also usually more objective observers showed a tendency towards employing war analogies. So did Christopher Flavin (Worldwatch Institute), when commenting the dispute on the „voluntary commitments“ of developing countries. According to his analysis, the negotiating process has developed the character of a duel between two environmental superpowers (the USA and China), locked in a bitter conflict that resembles the one that took place during

the "Cold War". The major reason for this muscle test is the call for „meaningful participation“ of developing countries in combating Climate Change by the USA and other non-European industrialised countries. Although not listed on the official agenda, this issue was widely discussed in the corridors and backrooms and was partly responsible for the sluggish progress in negotiations. As a countermove, China and India made per capita distribution of emission rights one of their central demands.

However, already at the beginning of COP 4, Argentina's president Menem withdrew from the consensus of the developing countries and announced the adoption of voluntary quantitative commitments for his country. Argentinas announcement went with the call for equal access to all flexible instruments, which mainly refers to Emissions Trading. To many observers, this kind of "voluntary limits to emissions" thus carries the danger of further dilution of the industrialised countries' reduction obligations. This is because if Argentina pursued a (strategically increased) political "business as usual" energy scenario, with the corresponding high increase in energy demand, it could introduce a large quantity of unused emission rights into the trading system.

If followed by other developing countries - bearing in mind the already existing large supply of "hot air" from Russian and the Ukraine – the price of tradeable units under a trading regime would drop significantly due to excess supply. Consequently, the incentive for industrialised countries to reduce their own emissions would be lost. Therefore, the inclusion of developing countries into quantified emission reduction commitments should require a decision on the process and the criteria for determining their obligations. The arbitrary adoption of "voluntary" commitments by developing countries, which are guided predominantly by considerations of particular interests of the respective countries, are not necessarily in the interest of climate protection.

In order to promote developing country participation in climate protection, efforts to strengthen the transfer of technology and know-how appear to be more promising. Some progress was achieved in this respect in Buenos Aires. Furthermore, the Global Environment Facility (GEF) of the World Bank, UNEP and UNDP was entrusted with the operation of the financial mechanism. It will start to finance measures to assist endangered developing countries in adapting to climate change, like e.g. the rising sea level. At the same time, as a concession to oil producing countries, compensation for potentially negative effects of climate protection via reduced demand for fossil fuels and raw materials will remain on the

agenda of the organs of the Convention. This topic is a sleeping „time bomb“ that is pushed carefully by OPEC countries from one round of negotiations into the next.

In Buenos Aires, the laggards clearly picked up points in the rather inconspicuous field of "review of commitments". According to the Framework Convention on Climate Change, the climate protection commitments of industrialised countries should have been reviewed twice. The first review took place in March/April 1995 at COP 1 in Berlin, when the Parties to the Convention determined that the commitments in Article 4.2 (a) and (b) FCCC were not adequate. As a result, the Parties initiated the negotiation process that led to the adoption of the Kyoto Protocol with binding obligations for industrialised countries in December 1997. According to the text of the Convention, a second review was to be conducted by 31 December 1998 at the latest. This, however, did not take place in Buenos Aires. The reasons for this are manifold and are mainly the result of the deadlock between industrialised and developing countries. Some industrialised countries demanded the inclusion of developing countries' emissions in the evaluation procedure outlined in the Convention. As a countermove, developing countries on their part demanded that detailed criteria were to be elaborated in order to assess whether industrialised countries were complying with their climate protection obligations. Quite significant and potentially worrying in this context is the fact that the Parties to the Convention seem to be quite willing to disregard concrete deadlines established in the treaty.

Equally serious was the inability of the Parties to agree on a date for the third review. Negotiations on a decision took place and according to the last draft presented shortly before the end of the Conference, this review was foreseen to take place by the end of 2002 at the latest. If this had been agreed, the review would have led to a renewed decision on the "adequacy of commitments" that would have been based on the latest findings of the IPCC. Since this decision was not adopted, the issue should enjoy highest priority at the next Conference of the Parties (COP 5) by the end of 1999. In contrast to this failure, the Parties did reach agreement on the submission of a third national report for industrialised countries by the end of 2001. Therefore, an evaluation of the adequacy of commitments will be based on better data should a decision on the third review be adopted at the next Conference.

There was furthermore some progress in the endeavour to establish a system to enforce compliance with the obligations in the Protocol. The procedure elaborated within the Framework Convention on Climate Change (the Multilateral Consultative Process) is more supportive in character and lacks the necessary sanctions. The

Buenos Aires Plan of Action outlines a process on how to reach a decision on a non-compliance mechanism by the Sixth Conference of the Parties in the year 2000.

Other important issues on the agenda of Buenos Aires were postponed in order to retain the possibility of deciding later on a more informed basis. For example, the treatment of forest sinks and the inclusion of further categories of sinks of greenhouse gases were linked to a special report by the Intergovernmental Panel on Climate Change, which will be adopted after the year 2000. As regards hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) – two groups of gases with a high greenhouse potential – the Conference decided to convene a workshop of the IPCC together with the relevant bodies of the Montreal Protocol on Ozone Depleting Substances. At the Fifth Conference of the Parties, ways and means of reducing these greenhouse gases not regulated by the Montreal Protocol shall be discussed.

2. The Landscape of International Climate Policy after Buenos Aires

Looking at the underlying reasons for the meagre results of Buenos Aires reveals several tendencies: first, the domestic political conflicts of the USA have been transferred to the international level. The test of strength between the US President and the American Senate, which must eventually ratify the Protocol, slowed down the negotiation process to a virtual standstill. The call for „meaningful participation“ of developing countries in the Kyoto-Protocol, formulated by the American Senate, was taken over by the US-administration in order to guarantee ratification of the Kyoto Protocol early in the next decade. The ethically questionable and strategically disastrous demand for "voluntary commitments" of developing countries catalysed the formation of an unsurmountable block made up of the oil-producing countries, China, India and other developing countries that efficiently prevents quick progress in the negotiation process.

Second, the negotiations after Kyoto are characterised by a record complexity. By bringing in several "flexible instruments" and by including greenhouse gas sinks in the Kyoto Protocol, the United States and the other non-European industrialised countries succeeded in exceeding the intellectual capacity of most negotiators and in overloading the process with a multitude of technical problems. Virtually no one involved in the negotiations is capable of grasping the overall picture of the entire climate negotiation process. Furthermore, as a result of the increasing complexity, a confusing variety of interests and potential coalitions has emerged, which renders

clear negotiation instructions for the annual Conferences of the Parties almost impossible.

And finally, representatives of civil society also find themselves caught up in the complexity trap. Not only are they trapped in the microcosm of technical details, but they furthermore see themselves deprived of their role as intermediaries to the media. There are no big news any more. After the acceptance of the Kyoto Protocol with its binding targets for reducing greenhouse gases, a concrete and compelling objective that could be presented to the public is missing. Thus, representatives of the media present at Buenos Aires complained about the lack of suitable material for broadcasting and printing. Instead, they produced plenty of reports about the many side events taking place at the Conference that were organised by environmental and industrial associations.

In fact, the presence of civil society groups was the only light in the haze of Buenos Aires. "Green", innovative enterprises are beginning to tear down the traditional borderline between "environment" and "industry". More and more, climate protection is perceived as a challenge that is to be met with creativity. Moreover, it is an „enormous opportunity to make money", as was pointed out by the Chief Executive Officer of Trigen Energy Corporation - a company that had increased its profits in the oil sector from one million dollars in 1987 to 241 million last year. Multinational enterprises such as BP – whose Chairman John Browne enthusiastically applauded the adoption of the Kyoto Protocol – are actively taking part in the "infiltration" of green ideas into the up to now rather inflexible business associations. At the conference, Daimler Benz not only introduced a prototype of a vehicle driven by fuel cells that will go into production in five years' time, but also sponsored thirty (unfortunately gasoline powered) buses for the shuttle service between the conference location and hotels in the chronically congested city centre.

Two conclusions can be drawn from this development. First, a leadership group must emerge at the international level that actively and publicly pursues climate protection within the framework of, but independent from, the entry into force of the Kyoto Protocol. Similar strategies have proved highly successful for example in the context of the Montreal Protocol for the protection of the ozone layer, but also in the negotiation of the Land Mines Treaty. Such a pioneering group would also receive massive support from non-governmental organisations, as could be observed during the establishment of an International Criminal Court, June 1998 in Rome.

Second, the most suitable place for creative climate policy at present is to be found at home. The overripe domestic potentials for reducing greenhouse gases must be used in order to start implementation of the Kyoto Protocol before it enters into force. Pursuing these two strategies – the building of a leadership alliance of pioneers internationally and effective climate protection at home – should contribute significantly to overcome the current standstill in the international climate regime. Besides of this it would proof that that ecological modernisation and an efficient economy are not only compatible targets, but that they are mutually dependent.